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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,345	01/10/2000	DAVID WAYNE MASKER	9D-HR-19109	4211

7590 08/26/2003

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EXAMINER

HARRIS, ERICA B

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/480,345

Applicant(s)

MASKER ET AL.

Examiner

Erica B Harris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 3-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 13 February 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on February 13, 2003 have been approved.
2. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 6-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bussan et al. (4,934,541). In Figures 1-4, Bussan *et al.* disclose a shelf 12 for a refrigerator 10, said shelf comprising a substantially flat plate 20 including a first surface and a second surface 62 and an outer periphery; at least one cross support 50 extending below said plate first surface; a frame 58 adhered to said outer periphery of said plate second surface with a solid adhesive seal 80 retained in a channel on the underside of said frame defined by lip 60 and flange 70 and forming a spill containment area defined by sealing lip 60; and at least one side support 22,24 connected to said cross support and configured for attachment to said refrigerator on tracks

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26,28, said frame adhered to said side support. The frame further comprises a bracket 32 connected to said side support 22,24, wherein said frame comprises molded plastic. Bussan further teaches the application of adhesive to said frame and then adhering said frame to said second surface of said plate in column 3, lines 50-58.

Regarding claims 8, 9, 19, and 20, Bussan sets forth a cross support 50 and side supports 22,24, wherein the cross support and side supports are integrally formed in the lower portion of the frame. As disclosed above, Bussan teaches that the frame 58 is adhered to the outer periphery of said plate second surface with a solid adhesive seal 80. Hence, the cross support and side supports are adhered to the plate by virtue of being integrally formed with the frame. Further, the fact that the elements are integrally formed does not preclude them from performing the function required by the claims.

Response to Arguments

5. Applicant's arguments filed February 13, 2003 and June 2, 2003 have been fully considered but they are not persuasive.

The arguments presented in the response filed February 13, 2003 will be addressed first. A response to the arguments of June 2, 2003 will follow.

The previously established objections to the specification, drawings, and claim 6 have been withdrawn in light of the amendments to each section cited above.

The previously set forth Section 112, 1st and 2nd paragraph rejections of claims 3 and 5-13 have also been withdrawn.

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Claims 1 and 3-5 have not been considered in this Office action because they are drawn to a non-elected invention.

With respect to applicants' remarks concerning the apparent failure of Bussan *et al.* (Bussan) to teach all of the limitations of the cited claims, the examiner maintains that the rejection is proper. Bussan discloses all of the limitations of the claims. As noted by applicants, Bussan discloses an upper and a lower frame joined by a weld that "sandwiches" a plate therebetween and has a layer of adhesive applied under the top layer of said frame to form a seal between the top portion of the frame and the plate.

However, contrary to applicants' comments, Bussan does set forth a cross support 50 and side supports 22,24. The cross support and side supports are integrally formed in the lower portion of the frame. The fact that the elements are integrally formed does not preclude them from performing the function required by the claims.

Further, regarding claims 8, 9, 19, and 20, these claims have been included in the rejection under Bussan because, as applicants pointed out in their response to the Section 112, 1st paragraph rejection, the plate is the direct connection between the frame, adhesive, cross support, and side supports.

Regarding the arguments set forth by applicants in the response filed June 2, 2003, the Office maintains that the restriction requirement is proper. Applicants submit that a thorough search and examination of any one Group would be relevant to the examination of the other Group - this assertion is unfounded. The patentability of an apparatus is determined by the patentability of the final structure not the method by which it is made, while the patentability of a

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method is determined by the patentability of the steps irrespective of structure. So while the end products of each set of claims may be related the examination process for each is very different.

Further, applicants assert that examining both groups would not be a burden on the Examiner. Applicants have failed to provide any factual basis illustrating that the searches of both groups are coextensive, that a coextensive search is a reason for not requiring a restriction, and the search and examination of both inventions would not cause undue burden on the examiner. Is it applicants' position that prior art which teaches the product automatically obviates the method? Nevertheless, having to search and consider two patentably distinct inventions having different criteria for patentability in the same application does constitute a serious burden on the examiner.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erica B Harris whose telephone number is 703-306-9071. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P Stodola can be reached on 703-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.



Erica B. Harris
August 25, 2003



DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600